

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Acceleration of Broadband Deployment:)	
Expanding the Reach and Reducing the Cost of)	WC Docket No. 11-59
Broadband Deployment by Improving Policies)	
Regarding Public Rights of Way and Wireless)	
Facilities Siting)	

**COMMENTS OF
SACRED WIND COMMUNICATIONS, INC.**

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Dated: July 18, 2011

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Sacred Wind Communications, Inc. (“Sacred Wind”) respectfully submits its comments in response to the Notice of Inquiry released by the Federal Communications Commission (“FCC” or “Commission”) on April 7, 2011 in the above-captioned proceeding.¹ The NOI seeks comments from various stakeholders “to identify means of improving rights of way policies and wireless facilities siting requirements.”² Among the topics addressed in the NOI, the Commission requests information concerning (1) the timeliness and ease of the permitting process; (2) the reasonableness of charges assessed for facilities siting and rights of way access; and (3) qualitative data concerning the permit approval process.³

As a leading provider of voice and broadband services on Navajo lands in the State of New Mexico deploying an advanced Fixed Wireless Local Loop (“FWLL”) network, Sacred Wind has significant experience with the huge costs, impediments and delays that facilities siting

¹ *In the Matter of Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, WC Docket No. 11-59, Notice of Inquiry, FCC 11-51 (Apr. 7, 2011) (“NOI”).

² NOI at 1.

³ *Id.* at 7-10.

and rights of way access imposes on broadband deployment, particularly on Tribal lands. These comments will address each of the foregoing areas of inquiry and provide a number of recommendations aimed at eliminating facilities siting and rights of way access issues as barriers to deployment on Tribal lands.

INTRODUCTION AND SUMMARY

As the Commission implicitly recognizes in releasing the NOI, in sum and substance, “if you want broadband, you have to get it built.” Sacred Wind applauds the Commission’s concern and focus on this critical issue and its leadership in seeking to remove rights of way access and facilities siting as barriers to broadband deployment, particularly as it affects deployment on Tribal lands.

Sacred Wind is an incumbent local exchange carrier and Eligible Telecommunications Carrier in the State of New Mexico formed in 2004 to introduce basic telephone services to the many thousands of unserved homes on Navajo lands and to provide the most advanced services, including high speed broadband services, to Navajo and non-Navajo residents, governmental entities, and businesses in its territory. In 2006, the company acquired from Qwest Corporation a portion of Qwest’s service territory comprising approximately 3,600 square miles in northwestern New Mexico on the Navajo Reservation and near-Reservation lands known as the “checkerboard,” as well as limited Qwest copper loop facilities in this territory. Since 2007, Sacred Wind has been building out a 3.65 GHz FWLL network over a WiMAX platform as an alternative to a copper access network, which is virtually impossible to widely deploy in Sacred Wind’s 3,600 square mile service territory given low population density (approximately eight persons per mile), the rugged geography, and overwhelming challenges in efficiently securing necessary rights of way on Tribal lands to lay copper plant. Still, as will be discussed below,

Sacred Wind must obtain approvals from various federal agencies as well as from the Navajo Nation, to site its fixed wireless facilities, to bring utilities to those facilities, and for the deployment of fiber in its network. The approval process for siting its facilities and accessing rights of way, without exaggeration, represents the most vexing and single greatest impediment to the efficient and rapid deployment of broadband facilities to its Navajo subscriber base.

As the Commission is aware, Tribal lands such as the Navajo territory suffer from one of the lowest telecommunications penetration rates in the country.⁴ Broadband service coverage in Tribal lands also falls well below the national average. While 95% percent of Americans live in areas with access to terrestrial, fixed broadband infrastructure, fewer than 10% of residents on Tribal lands have access to such services.⁵ If rapidly deploying new facilities and bringing broadband to Tribal lands is indeed a national imperative, as the Commission has so often stressed, then the Commission, Executive Branch Agencies, and the Navajo Nation must move beyond rhetoric and words, and take decisive, concrete steps to address the serious impediments to facilities siting and rights of way access on Tribal lands.

In Sacred Wind's case, the company has applied for rights of way and easements for fiber optic cable, copper wire, fixed wireless tower and monopole sites on (i) Navajo trust and fee lands; (ii) federal government land belonging to the Bureau of Indian Affairs ("BIA" or "Bureau"), Bureau of Land Management, and United States Forest Service; (iii) State of New Mexico lands, including state transportation department easements, county roadways, city government easements, and city-owned utility poles; and (iv) private lands – the so-called

⁴ *In the Matter of Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, WT Docket No. 11-40, Notice of Proposed Rulemaking, FCC 11-29, at 3 (Mar. 3, 2011) (noting recent study indicating that, while the national rate for wireline and wireless telephone subscribership was 97.6%, Navajo lands had a subscribership rate of only 37.4%).

⁵ *Id.*

“checkerboard” patchwork of land ownership that changes land section-by-section from one jurisdiction to the next over its Navajo service territory. To suggest, as the Commission does, that “[p]olicies for managing rights of way and siting wireless facilities, including the procedures and costs for acquiring permission to build, affect how long it takes and how much it costs to deploy broadband,”⁶ grossly understates the extent these issues adversely impact deployment on Tribal lands. Rather, as described in further detail below, this patchwork of federal, state, and local regulation has hampered significantly Sacred Wind’s access to vital rights of way and created substantial impediments to efficient and timely deployment. Coordinated national action is absolutely critical to addressing these issues, and Sacred Wind provides a number of recommendations at the end of these comments for the Commission’s consideration.

DISCUSSION

I. TIMELINESS AND EASE OF PERMITTING PROCESS

In the NOI, the Commission requests “updated information on the timeliness and ease of permit processing for rights of way and siting of wireless facilities.”⁷ Specifically, the NOI seeks information related to the procedural aspects of the permitting process, including the factors responsible for application delays and the common timeframes for permit processing.⁸ As the Commission has recognized, the current restrictions placed on rights of way access “significantly impact broadband development” and necessitate Commission action to make the permitting process easier for service providers.⁹ Sacred Wind recognizes the Commission’s recent efforts in the *Shot Clock Ruling* to expedite local zoning action on collocation and other

⁶ NOI at 2.

⁷ *Id.* at 7.

⁸ *Id.*

⁹ Omnibus Broadband Initiative, FCC, Connecting America: The National Broadband Plan, at 109 (2010).

tower siting applications.¹⁰ While Sacred Wind supports the *Shot Clock Ruling*, the FCC can and must do more to lessen the uncertainties and complexities of the application process in order to reduce the regulatory hurdles to broadband deployment.

A. Sacred Wind Regularly Encounters Unnecessary Delays Due to Lack of Clear and Consistent Application Procedures

Acquiring access to rights of way and communications sites represents the critical first step for all infrastructure projects. As the Commission notes in the NOI, the BIA oversees and controls rights of way access for many Tribal lands, including those of the Navajo Nation.¹¹ But often the BIA, state, and Tribal authorities maintain no written set of procedures or requirements governing the permitting process on which an applicant can rely. As a consequence, applicants like Sacred Wind learn through trial and error the procedural benchmarks and obligations mandated by a particular authority.

Not only may the requirements differ from one regulating authority to the next, but from one BIA office to another and from one BIA employee to another. This lack of regulatory consistency often leads to application delays for Sacred Wind's projects. This has been particularly evident at the BIA realty office level where rights of way access on the Navajo lands are reviewed and approved and where even minor ministerial issues can result in unnecessary and inordinate delays.

The central issue in Sacred Wind's interactions with the BIA is the Bureau's rigid interpretation of its authority under its regulations, 25 C.F.R. § 169, governing rights of way

¹⁰ *Petition for Declaratory Ruling To Clarify Provisions of Section 332(c)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165, Declaratory Ruling, 24 FCC Rcd. 13994 (2009); Order on Reconsideration, 25 FCC Rcd. 11157 (2010), *appeal pending*.

¹¹ NOI at 2 n. 4 (commenting that the BIA "plays a critical role in the rights of way processes for lands held by the United States in trust for a Tribe, for lands to which title is held by the Tribe but are also subject to federal restrictions against alienation and encumbrance, and trust or trust-restricted lands individually owned by members of federally recognized Tribes").

access on Tribal lands. The BIA draws no distinction between applications involving the use of Tribal lands for the benefit of the Tribe's members and those concerning non-Tribal territory. The right of way process for the placement of a communications tower or landline route on Tribal land to exclusively serve members of the Tribe is treated no different than a communications tower or landline route on Tribal lands dedicated to providing service to an adjacent highway or carrying bandwidth across a Reservation to serve non-Tribal areas. The BIA's management of the rights of way application process appears designed to limit outside encroachment on Tribal lands. While this may be a laudable goal, it should not come at the expense of developing broadband infrastructure on Tribal lands that is intended to serve the Navajo people.

In Sacred Wind's view, the BIA must better balance the management of Tribal lands with the protection of and service to the Navajo people. As an example, Sacred Wind has "Joint Attachment Arrangements" with five different electric utility companies within its service area. These formal agreements would allow Sacred Wind to attach their cables to the utilities' service poles. However, before attaching the cables to the poles, Sacred Wind must obtain a telecommunications easement from the appropriate jurisdiction, to supplement the existing electric utility easements. Under the BIA's current interpretation of the access rules, the Bureau ignores the existing easement on the poles and requires the applicant to satisfy all of the procedural requirements for establishing a new easement, even though the easement covers an existing utility corridor. Thus the applicant must conduct a new Cultural (Archaeological) Resource Survey, an Environmental or Biological Resource Survey, a Land Centerline Survey, an Appraisal, and obtain the written permission of any leaseholders or users of the underlying

property.¹² These new surveys and requirements may push back the start date of a simple telecommunications cable attachment project for two or more years, delays that would never be countenanced for deployment projects in rights of way in more developed areas, and indeed which fly in the face of deadlines adopted by the Commission for telecommunications pole attachments.¹³

The lack of regulatory clarity has also affected Sacred Wind's infrastructure projects with New Mexico state authorities. The New Mexico Transportation Department bears the responsibility for improving state and interstate highways as well as managing highway easements. The Department intends on installing fiber optic cable along much of the state's highways for safety and emergency purposes, although budgetary restrictions have limited deployment to date. As with the BIA, a lack of coordination between private industry and the state has produced a permitting process rife with uncertainty. The lack of clear precedent in the application process has impeded the development of wireless backhaul in rural areas and delayed fiber optic cable development along at least one major interstate highway.

¹² See 42 U.S.C. § 4321 *et seq.* (environmental surveys mandated by the National Environmental Policy Act); 36 C.F.R. § 800 (cultural resource survey mandated by National Historic Preservation Act); 25 C.F.R. § 169.3 (permission of leaseholders).

¹³ See *In the Matter of Implementation of Section 224 of the Act A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240 (2011).

B. Common Timeframes for Project Development and Completion

To illustrate the extent of the delays associated with the aforementioned permitting process, Sacred Wind prepared two exhibits detailing the typical timeframes and regulatory steps associated with certain applications. First, Sacred Wind provides a right of way process list attached as Exhibit 1 (“Right of Way Process List”). The Right of Way Process List details the necessary steps for a collocation of fiber optic cable on an existing pole line in a previously cleared easement located on Tribal land in a case where Sacred Wind has already secured a pole attachment agreement with the electric utility.

Assuming the application involves the status of only one land section, one land owner, and one authorizing jurisdiction, Steps 1-17 on the Right of Way Process List will normally take six months to a year to complete. By contrast, if the application involves the status of more than one land section spanning multiple authorizing jurisdictions, *this process could take three to five years*. Step 18, where Sacred Wind obtains the necessary signatures for a lease document, will commonly take one or two years. If Sacred Wind protests an excessive lease fee under Step 20, the entire process may take an additional six months to one year.

Second, Sacred Wind provides a siting process table attached as Exhibit 2 (“Siting Process Table”) for the siting of a communications tower or monopole. The Siting Process Table outlines the entire site acquisition and approval process, with estimated and actual completion dates, from the identification of the tower or pole site to the final lease authorization. As shown by the Siting Process Table, the common siting process can take over three years to complete.

By working with agencies and the Navajo Nation to establish clear and streamlined application processes, as described further in our recommendations below, the Commission can reduce the delay and uncertainty that currently undermines timely access to critical rights of way

and wireless sites. Reducing both the complexity and rigidity of the regulatory requirements that broadband providers must clear in order to receive a permit will result in faster deployment periods, increased coverage, and improved customer access in some of the country's most underserved areas.

II. REASONABLENESS OF CHARGES

In the NOI, the Commission asks “[t]o what extent and in what circumstances are rights of way or wireless facilities siting charges reasonable?”¹⁴ The Commission inquires into the appropriate criteria for determining the reasonableness of right of way charges, focusing on whether per-foot fees and other usage charges vary based on the demand for a particular right of way.¹⁵ The NOI invites service providers to discuss the differences between market- and cost-based access rates and whether cost-based rates may be better suited for certain projects.¹⁶

In Sacred Wind's experience, the appraisals and land use fees imposed on Sacred Wind's siting or linear projects often follow historic mining or pipeline fee formulas. The mining and pipeline formulas were designed to compensate the federal government or Tribal authority for the use of federally managed lands by extractive industries that deplete local natural resources for the benefit of non-Tribal customers. For telecom rights of way and facilities access, there is of course, no extractive activity whatsoever, and one can rightly question the basis for compensation based on anything other than administrative cost, particularly given governmental goals to foster broadband deployment in unserved and underserved areas. Yet, as with the regulatory review process involving Tribal versus non-Tribal areas, the BIA and Navajo Nation make no distinction when assessing access fees between projects intended to serve only the

¹⁴ NOI at 8.

¹⁵ *Id.*

¹⁶ *Id.*

Tribe's members and those which serve non-Tribal customers. Failing to recognize fundamental differences in the purpose of these projects, a communications tower or fiber optic cable project designed to serve the Navajo people will receive the same access and use charges as a gas pipeline which traverses a reservation to supply non-Tribal residents. In many instances, the rights of way and usage fees incurred by Sacred Wind represent the largest expense of the infrastructure construction project. Incredibly, these fees have even exceeded the aggregate installation cost for new fiber optic cable and copper circuits.

Here too, the Commission must work with federal agencies and the Navajo Nation to help ensure the reasonableness of rights of way access charges and easement assessments for telecommunications facilities. Fees should be reasonably limited to administrative cost, particularly for projects serving the Navajo people, which would recognize the differing infrastructure needs and income levels present in these communities and will ensure the sustainability of a provider's service network.

For example, under the current approach, a fiber optic extension from an existing fiber ring that would cost \$1 million to complete and would ultimately serve a rural community of 50,000, including a hospital, university and government offices, and highway traffic of 100,000 vehicles per week, might reach profitability within a few years. Adding 20% – 100% to its construction costs for a right of way could harm its financial projections to the extent that the project might never get off the ground or be deferred until a federal grant program is created to make it sustainable. A similar fiber optic extension designed to serve a Tribal community of 500 low-income households, with no institutional facilities or major traffic in the area, could only be made possible through a loan provided by the Rural Utilities Service of the Department of

Agriculture and state Universal Service Fund support. Adding 20% – 100% to its construction costs for a right of way could easily abort the project altogether.

III. QUALITATIVE INFORMATION

The Commission also requests illustrative examples and project data concerning rights of way access charges and delays to determine “how rights of way issues influence the deployment decisions of infrastructure providers.”¹⁷ The NOI also questions whether certain civic goals should be considered by regulatory authorities when making application decisions.¹⁸ As noted above, the delays and administrative resistance encountered by Sacred Wind can drive up costs and put infrastructure projects in jeopardy. Over two years ago, Sacred Wind submitted a request to attach fiber optic cable along 11.6 miles of an electric pole line that has existed for over 30 years. Sacred Wind required the fiber optic cable in order to add capacity to its fixed wireless and copper infrastructure that serves over 500 customers. As the existing pole line already contained a utility easement, Sacred Wind asked the BIA for a categorical exclusion from the applicable survey requirements. The BIA granted the request on the condition that Sacred Wind conduct all necessary archeological, environmental, and centerline surveys in order to qualify for the categorical exclusion. Sacred Wind incurred over \$170,000 in costs due to the BIA’s requirements, while the BIA appraised the easement for fee purposes at almost \$100,000. To date, some two years later, Sacred Wind still awaits BIA’s notice to proceed.

As the assessment of land use fees and easement appraisal occurs near the end of the lengthy access application process, excessive charges can halt infrastructure projects on Navajo lands and result in the waste of limited company time and resources. On a recent Sacred Wind

¹⁷ NOI at 9.

¹⁸ *Id.*

project, the BIA assessed *an \$80,000 fee for a half-mile of electric cable* to provide power to a small telecommunications tower designed to serve no more than 500 Navajo families. Although Sacred Wind secured a fee waiver for this project from the Navajo Resources Committee, the deliberations delayed the project by over a year. The BIA later appraised an existing eleven mile easement for a fiber optic attachment to an electric pole line at \$98,000. This fiber optic cable was necessary to increase the broadband capacity of less than 1,000 Navajo homes. Six months ago, Sacred Wind applied for a fee waiver for this attachment from the Navajo Resources Committee and a decision remains pending.

With one of the lowest average income levels in the country, Sacred Wind's customers cannot bear the burden of such high rights of way fees. Sacred Wind is often faced with the unenviable choice of absorbing the high access fees into the company's overall operating costs or terminating a project, and at the same time, as indicated above, can face huge delays in the completion of a critical project. In addressing these issues, the Commission and other governmental authorities must recognize the special needs of Tribal lands and of Tribal customers.

IV. RECOMMENDATIONS

Considering these challenges, Sacred Wind respectfully requests the Commission acknowledge the "need for coordinated national action to improve rights of way and wireless facilities siting policies" and take decisive action, working with other governmental authorities, to foster broadband development in Tribal areas.¹⁹ In response to the NOI's request for suggested Commission actions, Sacred Wind submits the following recommendations touching upon the application process and fee assessment issues described above.

¹⁹ NOI at 5.

- **Reactivate the Federal Rights of Way Working Group**

As the Commission recognized in the NOI, the Federal Rights of Way Working Group, led by the National Telecommunications and Information Administration (“NTIA”), released a report in 2004²⁰ recommending improvements to federal rights of way policies, information collection requirements, and the access fee standards for federal lands.²¹ While the Working Group’s report marked a commendable first step to addressing these issues, to our knowledge the Federal Rights of Way Working Group has been largely inactive in the seven years following the report. As an important first step, the Working Group should be reinvigorated to serve as a forum to assess and establish best practices for federal agencies as well as a key mediator in encouraging collaboration between private industry, government authorities, and consumer groups, removing log jams to deployment.

- **Adopt a Unified Federal Telecommunications Siting Regulatory Regime**

The federal government should consider the adoption of a single regulatory siting process for all relevant federal government departments and agencies. As noted previously, much of the delay experienced by Sacred Wind results from unclear or inconsistent application procedures. The unified federal regulations would possess an all-inclusive list of applicable requirements and written guidelines for compliance. The new rules would allow for expedited consideration of waiver requests and permit the applicant to request a waiver at the time it submits its application.

Sacred Wind believes the local siting ordinance for McKinley County, New Mexico provides a model regulation for the Commission’s consideration.²² Known in the industry as one

²⁰ See Federal Rights of Way Working Group, NTIA, Improving Rights of Way Management Across Federal Lands: A Roadmap for Greater Broadband Deployment (2004), *available at* http://www.ntia.doc.gov/reports/fedrow/FROWReport_4-23-2004.pdf.

²¹ NOI at 3-4.

²² See McKinley County, N.M., Local Ordinance No. DEC-2001 (2003), *available at* <http://www.co.mckinley.nm.us/pdf/legal%20pdf%20files/Tele%20Ordinance.pdf>.

of the most demanding communications tower siting ordinances in the country, it is also the most predictable in process and efficient in implementation that Sacred Wind has encountered. While the ordinance contains a strong bias toward collocation, if an applicant can make a case for a new tower installation the due diligence required is comprehensive but easily understood. In contrast to Sacred Wind's interactions with the BIA, the ordinance does not give rise to modifying interpretations or administrative surprises at any step of the application process. Waivers from certain requirements may be sought at any time and the application is reviewed in the presence of the applicant by the County Attorney and an appointed body, the County Smart Growth Commission. Permission for a new tower site or a collocation can be made in less than six months from the start of the building process. Sacred Wind's positive application experiences in McKinley County make the local ordinance an important model for future Commission action.

- **Ease Broadband Deployment through Increased Conduit Development**

As described above, the New Mexico Transportation Department plans to install fiber optic cable along much of the state's highways for safety and emergency purposes. Under proposed legislation introduced this year, states would be required to include conduit when laying federal highways which could be used for fiber facilities.²³ This "dig once" policy would allow broadband providers to install necessary lines as part of the highway construction process and prevent the types of delays experienced in New Mexico. The Commission should vigorously support such legislation as well as encourage states to adopt cost-based conduit lease fees. These actions would lead to a dramatic and rapid rise in broadband capacities for rural areas and Tribal lands.

²³ See Broadband Conduit Deployment Act of 2011, H.R. 1695, 112th Congress (2011).

- **Establish Specific “All-Utility” Corridors on Federal, State, Tribal, and Local Lands**

The Commission should encourage the establishment of non-exclusive utility corridors within existing rights of way dedicated for electric or water utilities. These areas have already been subject to the right of way approval process and allowing the installation of broadband infrastructure will eliminate duplicative applications for access. This recommendation would foster development in areas previously designated as “utility corridors” as well as encourage the full utilization of corridors in rural areas. Where no utility right of way exists along rural and Tribal roadways, non-exclusive utility corridors should be established for the benefit of local residents. Many roads do not possess a non-exclusive utility corridor even though a right of way has been granted for the purposes of a roadway corridor.

- **Designate Existing Utility Poles for Categorical Exclusions**

Steps should be taken to designate existing utility poles for categorical exclusions from applicable survey requirements, substantially reducing the length of the application process. Many utility poles currently exist which may be further utilized for the connection of communications facilities. This proposal would permit new construction of essential facilities without disturbing the land itself. Construction activities would remain within the parameters established for the maintenance of existing lines. This recommendation would also allow the grandfathering of rights of way for those poles which have been in existence and supplying essential services for years. The Rural Utilities Service of the Department of Agriculture has already adopted an equivalent policy for the attachment of telecommunication cable on electric pole lines²⁴ and the Commission should explore similar action in connection with this NOI.

²⁴ See 7 C.F.R. § 1794.21.

- **Eliminate Archeological Assessment Requirement for Certain Facility Projects**

In addition to designating certain projects for categorical exclusion, the archeological assessment requirement should be eliminated for a project which will replace an old communications facility without appreciably increasing the facility's "footprint". This will create positive incentives for service providers to replace old communications towers instead of engaging in new land use. As with expanding the categorical exclusion, this recommendation will cut down on duplicative and costly surveys, reducing application approval times.

- **Create a "Shot Clock" for Every Stage of Tower and Landline Applications**

Sacred Wind acknowledges and supports the Commission's recent efforts under the *Shot Clock Ruling* to expedite local zoning action on certain siting applications.²⁵ Sacred Wind believes the benefits of an expedited review process should be applied to every stage of the application process involving communications tower or landline projects. Reviewing authorities should not be permitted to unduly delay the start of an infrastructure project through administrative inaction. Government agencies should be required to review applications expeditiously and identify any deficiencies or errors for swift correction.

- **Remove Redundancy in Rights of Way Application Reviews**

Under the current application processes applicable to Sacred Wind, its rights of way applications must undergo separate reviews by two supervising authorities.²⁶ First, the full application must be submitted to the Navajo Nation authority. Once the Tribe thoroughly reviews and approves the application, the information must be submitted again to the BIA for

²⁵ *Petition for Declaratory Ruling To Clarify Provisions of Section 332(c)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165, Declaratory Ruling, 24 FCC Rcd. 13994 (2009); Order on Reconsideration, 25 FCC Rcd. 11157 (2010), *appeal pending*.

²⁶ See Exhibit 1: Right of Way Process List; Exhibit 2: Siting Process Table.

approval. Nothing indicates that the Navajo Nation is incapable of conducting a competent review of Sacred Wind's applications or properly assessing the detailed information submitted in support of an infrastructure project. As a result, applications approved by the Tribal authority should not be required to undergo a second, duplicative review by the BIA, and at a minimum, that review should be significantly streamlined.

CONCLUSION

For Sacred Wind, the approval process for siting facilities and accessing rights of way represents the most vexing and single greatest impediment to the efficient and rapid deployment of broadband facilities to its subscriber base. Sacred Wind applauds the Commission's interest in addressing these issues, and urges the Commission to take swift and decisive action to help eliminate facilities siting and rights of way access as barriers to deployment on federal lands and Tribal lands. At a minimum, the Commission and other federal agencies should revitalize the Federal Rights of Way Working Group, and include participation by industry and Tribal governments. The Commission should also explore various approaches by which the recommendations discussed above may be further reviewed and adopted.

Respectfully submitted,

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Dated: July 18, 2011

Exhibit 1: Right of Way Process List

1. Identify site location (25 C.F.R. § 169)
2. Approval from Local, i.e. Chapter, Land Use Planning Committee
3. Telecommunications engineering draft
4. Submit letter to Navajo Nation and BIA for permission to Survey
5. Submit letter to Navajo Nation and BIA for permission to conduct Archaeological and Environmental (“A&E”) Survey (*See* 42 U.S.C. § 4321 *et seq.*; 36 C.F.R. § 800 *et seq.*)
6. A&E field work and records review
7. A&E consult with Native American Tribes (up to 16 tribes)
8. A&E consult with State Historical Preservation Officer (“SHPO”)
9. Archaeological review by Navajo Nation Historic Preservation Office and Cultural Program - Obtain Cultural Resources Compliance Form
10. Environmental review by Navajo Nation Environmental Protection Agency - Obtain Biological Resources Compliance Form
11. A&E review by BIA - Obtain Categorical Exclusion Letter
12. Request BIA conduct field survey
13. Request BIA conduct Appraisal Report
14. Prepare Navajo Nation Signature Authority Sheet (“SAS”) package
 - i. Letter of Application
 - ii. Application Fee
 - iii. Service Line Agreement
 - iv. Land Use Committee permission
 - v. Chapter Resolution
 - vi. Survey Map
 - vii. Survey Field Notes
 - viii. Survey Legal Description
 - ix. Archaeological Survey & Categorical Exclusion
 - x. Environmental Survey & Categorical Exclusion
15. Submit SAS package to Navajo Land Department
 - i. Project Review

- ii. Conduct Field Clearance
- iii. Conduct Road Clearance
- iv. Conduct Utility Clearance
- v. Write Resolution draft and assign SAS number
- vi. Navajo Fish & Wildlife Department – signature needed
- vii. Navajo Historic Preservation Department – signature needed
- viii. Cultural Program manager
- ix. Navajo Minerals Department – signature needed
- x. Navajo Environmental Protection Agency – signature needed
- xi. Navajo Department of Justice
- xii. Navajo Office of the President

16. Submit complete SAS package for final review to Navajo Land Department – obtain Director’s signature

- i. Submit Resolution draft to Navajo Resources Committee for approval
- ii. Legal Counsel – signature needed
- iii. Speaker of the House – signature needed
- iv. Schedule Resource Committee hearing – seek approval

17. Prepare & Submit Bureau of Indian Affairs package

- i. Chapter Resolution
- ii. Navajo Resources Committee Approval
- iii. Navajo Site Clearance
- iv. Archaeological clearance
- v. Environmental clearance
- vi. Road/Utility clearance
- vii. SAS signature sheet
- viii. Field Survey
- ix. Field Survey Notes
- x. Survey Legal Description
- xi. BIA Appraisal Report

18. Sign Lease Document

- a. Company

- b. Navajo Nation
 - c. Bureau of Indian Affairs
- 19. Pay Lease Fees & file document with the County
- 20. Alternatively, protest lease fee and seek waivers at the Navajo Resources Committee

Exhibit 2: Siting Process Table

	Procedure	Time estimated	Time actual
1	Identify tower/pole site, conduct radio wave path profile) (25 C.F.R. § 169)	March 1, 2008	March 1, 2008
2	Apply for Chapter approval of site	March 7	March 1
3	Obtain Chapter(s) Resolution for permission to construct	April 10	April 12
4	Apply to Navajo Nation & BIA for permission to survey site	April 11	April 16
5	Receive Navajo Nation permission to survey	April 18	April 30
6	Obtain BIA concurrence to survey	May 10	May 15
7	GPS and stake site & conduct field survey, evaluating terrain & identifying soil type, any impediments to line of sight, environmental & archaeological exposures, availability to electric	May 11	May 18
8	Apply to Navajo Nation & BIA for permission for archaeology & environmental (“A&E”) surveys (<i>See</i> 42 U.S.C. § 4321 <i>et seq.</i> ; 36 C.F.R. § 800 <i>et seq.</i>)	May 14	May 24
9	Receive A&E survey permission from Navajo Nation & BIA	May 20	June 1
10	Schedule A&E surveys	May 21	June 5
11	Conduct A&E surveys	June 30	July 20
12	Consult by letter with 19 Tribes and the State Historical Preservation Office	June 30	Aug 16
13	Await 30 days tribal consultation response	July 30	Sept 16
14	Address Consultation objections	August 15 (if any objections)	NA
15	Receive environmental report	July 30	Aug 30
16	Receive archaeological report	Sept. 12	Oct 10
17	Submit A&E reports to BIA; request Categorical Exclusion letter	Sept. 15	Oct. 20
18	Receive BIA Categorical Exclusion letter	Nov. 15	Jan. 9, 2009
19	Complete Navajo Nation SAS application package & submit to Navajo Nation Land Department	Nov. 30	Jan. 28, 2009
	i. Letter of Application		
	ii. Application Fee		

	iii. Service Line Agreement		
	iv. Land Use Committee permission		
	v. Chapter Resolution		
	vi. Survey Map		
	vii. Survey Field Notes		
	viii. Survey Legal Description		
	ix. Archaeological Survey & BIA Categorical Exclusion		
	x. Environmental Survey & BIA Categorical Exclusion		
20	Submit final ROW application to Navajo Nation Signature Approval Sheet (“SAS”) process	Dec. 5	Feb. 10, 2009
	• Project Review		
	• Conduct Field Clearance		
	• Conduct Road Clearance		
	• Conduct Utility Clearance		
	• Write Resolution draft and assign SAS number		
	• Navajo Fish & Wildlife Department – signature needed		
	• Navajo Historic Preservation Department – signature needed		
	• Cultural Program manager – signature needed		
	• Navajo Minerals Department – signature needed		
	• Navajo Environmental Protection Agency – signature needed		
	• Navajo Department of Justice – signature needed		
	• Navajo Office of the President – signature needed		
21	Rural Utilities Service (“RUS”) review and approve A&E Reports	October 12	Nov. 8
22	Complete SAS and submit to Navajo Nation Land Dept. Director for signature	Nov. 1	Feb. 20, 2009
23	Submit Resolution draft to Navajo Resources Committee for approval	Nov. 2	Feb. 22, 2009
24	Seek inclusion of Resolution on Agenda - Navajo Nation Resource Committee hearing – seek approval	Nov. 17	Mar. 5, 2009
26	Obtain Resolution approval – Navajo Nation Resources Committee	Jan. 31, 2009	May 22, 2009
27	Navajo Nation Speaker of Council –	Feb. 15, 2009	June 10, 2009

	signature needed		
28	Obtain Navajo Nation lease approval	Feb. 28, 2009	July 12, 2009
29	Request BIA appraisal of easement or ROW	Mar. 1, 2009	July 14, 2009
30	Receive BIA appraisal	Apr. 1, 2009	Sept. 20, 2009
31	Prepare & submit BIAROW application package	April 15, 2009	Oct. 10, 2009
	i. Chapter Resolution		
	ii. Navajo Resources Committee Approval		
	iii. Navajo Site Clearance		
	iv. Archaeological clearance		
	v. Environmental clearance		
	vi. Road/Utility clearance		
	vii. SAS signature sheet		
	viii. Field Survey		
	ix. Field Survey Notes		
	x. Survey Legal Description		
	xi. BIA Appraisal Report		
32	Receive BIA approval & Lease consent	Sept. 15, 2009	May 16, 2010
33	Obtain Title Insurance for Lease Site	Dec. 14, 2009	July 25, 2010
34	Receive RUS Title Insurance approval	Dec. 21, 2009	Aug. 15, 2010
35	Begin RFP plans for construction to submit to RUS	Dec. 31, 2009	Aug. 30, 2010
36	Complete construction	May 31, 2010	Mar. 15, 2011